



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION

MRA/165571

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance, a hearing was held on May 21, 2015, at Elkhorn, Wisconsin. The record was extended post hearing to clarify a Medicare Part A & B expense as well as nursing home amount due. A decision was issued on July 21, 2015 that increased the community spouse income allocation (CSIA) but did not backdate that increase. Petitioner filed a rehearing request contending that the failure to backdate was an error of law and that request was granted

The issue for determination is whether Petitioner's community spouse income allocation (CSIA) may be increased (thus reducing Petitioner's patient liability).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sandy Cross

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

This decision replaces the original decision of July 21, 2015 in its entirety. This is for ease of reading. While it in large part is identical to the original decision the areas of difference have to do with backdating, a change in the amount of the community spouse income allocation (CSIA) as the original order contained the wrong CSIA as a scrivener error and the amount of the CSIA for a different time period than the original.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. Petitioner has a community spouse and filed this appeal seeking an increase in the community spouse income allocation (CSIA) and asks that it be backdated to September 1, 2014.
3. Petitioner's gross income is \$3168.27 and consists of Social Security benefits of \$2019.90 (this is before Part A&B premiums of \$104.90); a private pension of \$442.20 and another private pension of \$706.17.
4. Petitioner's community spouse's gross monthly income is \$4324.90 and consists of a pension of Social Security of \$1,124.90 (this is before Part A & B premiums of \$104.90) and earned income of \$3200.00.
5. Total income for Petitioner and spouse is \$7419.23 (again, after Part A & B premiums).
6. The agency determined that Petitioner's community spouse has shelter expenses sufficient to bring the community spouse income allocation to the maximum of \$2931. As Petitioner's community spouse has earned income in excess of that amount no income of Petitioner was allocated to his community spouse. This determination was made as of March 2015 based on a December 2014 application with backdating to September 2014 requested by Petitioner.
7. Petitioner's community spouse's monthly expenses are part of the record in considerable detail at Exhibit # 3 but are summarized as follows:

Shelter costs	\$2019.72
HealthCare costs	\$ 883.64
Payroll Taxes	\$ 716.30
Other	\$ 917.21

These expenses total: \$4536.87

Additionally, a Part A and B premium of \$104.90 for Petitioner must be added to the expenses making the total \$4641.77. Finally, there was a nursing home debt of \$15,632.04 at the time of hearing and Petitioner's spouse was paying about \$500.00 toward that debt.

8. Included in the other expenses are food at \$417.99; clothing at \$100.00 and entertainment at \$50.00.
9. The record does not contain detail as to when the \$15,632.04 nursing home began. Post hearing Petitioner's attorney did tell this ALJ that it began as of September 2014.

DISCUSSION

Medical assistance rules require institutionalized persons to "apply their available income toward the cost of their care." *Wis. Admin. Code § DHS 103.07(1)(d)*. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5*; also see *Medicaid Eligibility Manual (MEH), §18.1*. An institutionalized person may allocate some of his/her income to the community spouse. *MEH, §18.6.1*. The minimum monthly maintenance needs allowance (MMMNA) currently is \$2,621.67 plus excess shelter costs to a maximum of \$2931.00. *Medical Eligibility Handbook (MEH), § 18.6.2*. This increases July 1, 2015 to \$2655.00. *See Operations Memo, # 15-21, effective July 1, 2015*. Here is no increase in the MMMNA based on excess shelter costs noted in the Operations Memo. Excess shelter costs are shelter costs above \$786.50 but that increases effective July 1, 2015 to \$796.50, *Id.*, and these consist of:

Community spouse shelter costs include the community spouse's expenses for:

- i. Rent.
- ii. Mortgage principal and interest.
- iii. Taxes and insurance for principal place of residence. This includes renters insurance.

- iv. Any required maintenance fee if the community spouse lives in a condominium or cooperative.
- v. The standard utility allowance established under the FoodShare program:

If <u>Community Spouse</u> pays:	Add
Heat and utilities	See <u>8.1.3</u> of the FoodShare Handbook for the standard utility allowances.
Utilities only	" "
Telephone only	" "
If the community spouse lives in a condominium or cooperative where the maintenance fee includes utility expenses, reduce the standard utility allowance by the amount of utility expenses included in the maintenance fee.	

Id.

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. *Wis. Stat. §49.455(8)(c)*; *Wis. Admin. Code §DHS 103.075(8)(c)*; *Medicaid Eligibility Handbook (MEH)*, § 18.6. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c)*. Further, "... exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c)*.

Finally, backdating was requested here. There was an earlier Division of Hearings and Appeals case for Petitioner that was filed seeking action on an application for Medicaid filed on behalf of Petitioner. Division of Hearings and Appeals case # 164374. That appeal was withdrawn after the application was approved effective September 1, 2014. The instant appeal seeks backdating of an increase in the CSIA to September 1, 2014. Though the original decision in this case did not approve that backdating, the decision was in error. The Division of Hearings and Appeals has approved backdating in the past citing general Medicaid eligibility statutory reference. *See Division of Hearings and Appeals cases attached to Petitioner's Rehearing Request.*

Thus the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs.

The first determination is to establish the minimum monthly maintenance needs allowance (MMMNA). Again, it is \$2621.67 plus shelter expenses in excess of \$786.00 to bring the maximum community spouse allowance to \$2931.00; in other words, excess shelter expenses of about \$310.00 bring the MMMNA to \$2931. As those shelter expenses are about \$1430 with the allowances, Petitioner's community spouse is at the \$2931 without additional allocation by the hearing process.

To determine whether Petitioner's community spouse expenses represent necessary and basic maintenance needs, I have reviewed the expenses noted at Finding # 7 and detailed in Exhibit # 3. Additionally, I note testimony from Petitioner's spouse that food and clothing are somewhat high as she works full time and at an ice cream shop where she wears a uniform. I am making some adjustments. While the food budget is high I understand that Petitioner is working full time and also visits her husband, nonetheless, this is double the usual \$200 standard FoodShare allotment that would normally be allowed, so I am reducing it by \$100.00. Further the clothing allowance is also high. Once a uniform is purchased replacement is not as frequent as monthly so am reducing it by \$50.00 per month. I cannot conclude that \$50.00 a month for entertainment is a basic and necessary expense that requires taxpayer payment of

nursing home obligations. Thus the total reductions are \$200.00. As for the \$500.00 paid to the nursing home for the balance that accrued as Petitioner was waiting for an eligibility determination as well as a hearing increasing the CSIA, as I am approving backdating to September 1, 2014 I am not allowing that expense. Though the logistics may be a bit cumbersome, the backdated CSIA reduces the patient liability amount which should result in additional Medicaid payments to the facility which should then result in a refund to Petitioner's community spouse by the facility. This should cover the arrearage that accrued. I am, therefore, approving the increase in the community spouse income allowance to \$4441.77 as of September 1, 2014.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner's community spouse is eligible for an increase in the community spouse income allowance to \$4441.77 effective September 1, 2014.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county agency with instructions to increase the community spouse income allowance to \$4441.77 as of September 1, 2014. The county agency must take these steps within 10 days of the date of his Order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of March, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 16, 2016.

Walworth County Department of Human Services
Division of Health Care Access and Accountability
[REDACTED]